



Insurance Reform Must Be Part of Liability Debate

July 11, 2005

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Special to Roll Call*

The American health care system is in crisis, in part because of ever-skyrocketing medical malpractice insurance rates. Contrary to the assertions of some, however, the reason for high medical malpractice insurance rates is not payouts from frivolous patient lawsuits, but insurance industry practices.

This is the latest issue to emerge from the contentious relationship

between the insurance industry and America's physicians. For years, doctors have fought on behalf of their patients against insurance companies seeking to limit needed care in order to maximize profits. Ultimately, physicians had to file class action lawsuits — which they won — against the industry for its refusal to pay claims for necessary health care.

Ample recent evidence shows that lawsuits are not the cause of doctors' rising medical malpractice premiums. This means that the proposed "solution" of capping damages would not result in insurers lowering rates. Instead, it would only penalize the most severely injured patients and the families of those who died as a result of medical negligence.

A new study by the Kaiser Family Foundation found:

- Total malpractice payouts have actually fallen an average of 2.4 percent per year since 2001, when adjusted for inflation.
- In the 10 years prior to 2001, malpractice payouts increased by only 2.5 percent annually.
- The number of physicians rose 31 percent, from 623,378 in 1992 to 814,909 in 2003.
- These factors produced a 25 percent decrease in the average number of claims per physician.

So if medical malpractice payouts have actually decreased, what is causing the insurance

industry to continue to raise premiums for doctors?

The experience of California is instructive. That state passed legislation capping malpractice damages in 1975. Despite the caps, malpractice premiums rose 450 percent in the 13 years following the legislation. It was not until the passage of insurance reform in California, with Proposition 103, that premiums stabilized and declined. Ironically, the medical malpractice legislation in Congress which was purportedly based on the California law included the caps on damages but makes no mention of insurance reform.

A review of the insurance industry's statements on malpractice rates is critical to understand the problem — and possible solutions. Perhaps most enlightening was the statement from Dennis Kelly, spokesman for the American Insurance Association, in January 2005 that “[w]e have not promised price reductions with tort reform.” This honest, yet damning, admission raises the question of why Congressional leadership would undertake to limit victims' rights without providing relief to health care providers.

Insurance industry experts like former Federal Insurance Administrator J. Robert Hunter say rate hikes are the result of insurance company investment losses. Others point to old-fashioned price-gouging. Just this year — in March 2005 — the Washington state insurance commissioner examined medical malpractice insurance rates, found they were unjustifiably high, and ordered a refund of more than \$1 million in excess premiums to physicians.

The experience of insurers in my home state of Colorado is illustrative of what is happening nationwide. The Colorado Physicians Insurance Company, the state's largest medical malpractice insurer, currently maintains a surplus that is nearly seven times what the National Association of Insurance Commissioners says is necessary. This is \$87 million more in premiums than what it needs to comfortably pay projected claims. Despite this surplus, in 2004, COPIC took in more than triple in premiums what it paid out in claims. And over the last five years, the premiums it charged increased at 2.7 times the rate of payouts.

The insurance industry as a whole is doing extraordinarily well — a record \$25 billion in annual profits. So how do they get away with raising rates for doctors and patients alike?

Part of the problem is an anachronistic law. The insurance industry is the only industry other than Major League Baseball that is exempt from federal anti-trust regulation. It is left to out-matched state insurance commissioners to police powerful insurance companies that may legally collude to fix prices.

Congress should act to stop the price gouging of physicians by the insurance industry, but the solution is not to penalize legitimate victims of medical negligence. That is a disservice to the American health care system and a symptom of the aversion some in Washington have to fact-based policy making. As troubling, it has more to do with attacking the lawyers — as surrogates for the patients most severely injured by medical

negligence — for political reasons than with solving the problem of high insurance rates.

There is a solution. We can and should work across the aisle to reduce medical malpractice insurance rates. We should do this, however, by passing bipartisan insurance reform that helps doctors struggling with artificially inflated insurance rates without punishing injured patients.

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